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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/110,103	07/01/1998	MICHAEL C. POWERS	019143.0272	4295

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EXAMINER

IRSHADULLAH, M

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/110,103

Applicant(s)

POWERS ET AL.

Examiner

M. Irshadullah

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached sheets.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. This communication is in response to the amendments filed January 10, 2003.

#### ***Response to Arguments***

2. In the remarks, the Applicant argues in substance that;

a) There is no motivation to make the suggested combination: "Havens-Beebe combination fails to teach, suggest or disclose various aspects of claim 1. A *prima facie* case of obviousness requires that each and every claim limitation be taught or suggested in references and there be suggestion or motivation to modify the references".

In response to Applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, in Applicant's claim elements 1a and 1b, for instance:

1a), Havens teaches: storing a plurality of user-defined data elements for an evaluation process ( Fig. 2 ( 66 ), col. 10, lines 19-21, col. 6, lines 19-23 ( specifically line 22 ), 23-48, claim 1, col. 14, line 32, col. 5, lines 59-60 recited with col. 3, lines 9-12, 39-41, col. 11, lines 9-13, abstract, line 1 and col. 1, lines 7-8, Fig. 3 ( 132 ) ); wherein cited Fig. 2 (66) provide memory storing

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instructions and manipulation information (Col. 10, lines 19021), said information were collected “surveyed workers data” (Fig. 2 (15), col. 6, line 23-25). Applicant will appreciably realize that the instructions and the survey data would be as would have been defined by the user (user-defined). Cited col. 6, lines 19-23 show manipulation of surveyed data relating to “workers productivity assessment”. Similarly, col. 5, lines 59-60 show the weights 54, 55, 56, 57 assigned (defined) by managers etc. (users) for the workers working for them; col. 3, lines 9-12 and 39-41 show the user-defined criteria (data) to be organized into sectors, like 5, 7 etc., and col. 11, lines 9-13, abstract, line 1, col. 1, lines 7-8 recite “assessment” or “evaluation” of workers’ productivity (Fig. 3 (132)) which was cited in the prior office Action to point to “productivity ass” only not for “generating” the “productivity ass” as mis-construed by the Applicant.

In element b, as discussed above, Havens teaches storing, assessment, transferring or moving data or information back and forth (mapping) among various computers (Col. 10, line 9-System 10 may operate on one or more computers 60) or among various functional components, such as retrievers, calculators, relators etc. and system’s databases (Fig. 2 (12 comprising 14, 16, 18: col. 6, lines 21-24 and 34). Cited one or more computers would be external to each other, or even if one computer were used, data or information would be moved (mapped) from one component to database, such as Fig. 2, survey data 15 stored (moved or mapped) to database 12 (Col. 6, lines 23-26), here, it will be appreciated that survey collecting component of system 10 were external to database 12.

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Furthermore, having manipulated survey data, system's Relator 40 stores (transfers or maps) comparison values 39 to database 18 (col. 10, lines 50-53), so that said values would be used as benchmark in the future. The databases of Havens system 10, were organized (stored or mapped) in some suitable format (Col. 3, lines 9-13), such as file (a form of table) format (Col. 13, line 67-to modify survey data 15 in criteria weight file 16) or in the format shown in Fig. 1 which clearly represents tables.

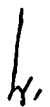
Thus, Havens teaches the features claimed in elements 1a and 1b; yet does not teach "(data) associated with a telephony switch". However, Beebe et al teach the same (Col. 4, lines 6-7 and 34-38, which respectively read: Fig. 4 discloses a complete telephone switching system; and during a transition from state 5 to normal state 1 interconnection and housekeeping data from the on-line system automatically transferred to the stand-by system to ensure that the databases are identical (or data are associated to telephony switch).

Moreover, Applicant ought to appreciably realize that a business by its very nature employs a combination of the various arts/fields of endeavor, systems, techniques, procedures, programs, devices; which themselves comprise varied ways, means and terminology, and thus end up being classified under numerous classes/subclasses.

In general, applicant's arguments fail to consider the full teachings of the references in light of the knowledge generally available to those in the appropriate (Business) art and the level of ordinary skill in this art.

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In the light of above discussed facts, it is, therefore, stated that the combination of Havens and Beebe et al teach Applicant's invention as claimed.

  
M. Irshadullah

February 13, 2003

  
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